

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Orhomuru, Sunday)	Docket:	06-0713-SOR.RA
)		
Serial No.:	09/862,789)	Examiner:	Jacobs, Lashonda T.
)		
Filed:	September 21, 2001)	Group Art Unit:	2457
)		

For: **DATA TRANSFER OR TRANSFER OF DATA USING
WIRELESS MOBILE PHONE AND ANY OTHER
WIRELESS MOBILE DEVICES**

Dated: November 11, 2009

Mail Stop – Appeal Brief Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Sir:

Appellant submits the following Appeal Brief pursuant to 37 C.F.R. §41.37 for consideration by the Board of Patent Appeals and Interferences. Additionally, Appellant submits amendments to the claims pursuant to 37 C.F.R. §41.37(b).

CERTIFICATE OF ELECTRONIC FILING

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November 11, 2009
(Date)

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I. REAL PARTY IN INTEREST

The real party in interest is the inventor and Appellant, Sunday Orhomuru.

II. RELATED CASES, APPEALS OR INTERFERENCES

There are no related cases, appeals, interferences and/or patents known to the Appellant or Appellant's legal representative which will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 5-11 are pending and remain rejected. Appellant has amended claim 6 to include the limitations of claims 7 and 8. Accordingly, claims 7 and 8 are canceled. Appellant respectfully believes that independent claims 5 and 6 and dependant claims 9-11 are now allowable for issuance.

IV. STATUS OF AMENDMENTS

Appellant is appealing a Final Office Action issued by the Examiner on May 11, 2009, wherein the Examiner rejected claims 5-8 pursuant to 35 U.S.C.

§ 102(e) and also rejected claims 9-11 pursuant to 35 U.S.C. §103(a). The Appellant hereby amends claim 6 to include the limitations of claims 7 and 8, and cancels claims 7 and 8. Further, Appellant appeals the rejection of independent claim 5 and dependant claims 9-11, and also appeals the rejection of newly-amended independent claim 6.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The patent application being appealed was filed by a pro se Applicant. Accordingly, there are no reference numbers within the specification and drawings. Further, there is has been no objection for lack of reference numerals and therefore no reference numbers are indicated for each independent claim.

A first embodiment of the present invention (as represented by claim 5) concerns a method for data transfer or transferring data, the method comprising the steps of (A) obtaining a wireless mobile device, wherein the wireless mobile device comprises a browser selected from the group consisting of WAP browsers and any other wireless mobile device browser; (B) selecting an operation from the group consisting of accessing data selected from the group consisting of data files and database files via the browser both online and

offline, (C) posting data selected from the group consisting of data files and database files via said browser both online and offline, (D) updating data selected from the group consisting of data files and database files via the browser both online and offline and (E) deleting data selected from the group consisting of data files and database files via the browser both online and offline; (F) utilizing the wireless mobile device to access a computer on a very secure environment with data integrity; and (G) performing the selected operation.

The second embodiment of the present invention (as represented by newly amended claim 6) concerns a method for accessing, posting, updating and deleting information selected from the group consisting of any type of data files and database files comprising the steps of (A) obtaining a wireless mobile device, wherein the wireless mobile device comprises a browser selected from the group consisting of WAP browsers and any other wireless mobile device browser; (B) utilizing the wireless mobile device to access a computer on a very secure environment with data integrity; and (C) performing an operation via the browser both online and offline, wherein the operation is selected from the group consisting of accessing information, posting information, updating

information, deleting information, and the information being selected is from the group consisting of any type of data files and database files.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The first ground is whether claims 5-8 are patentable under 35 U.S.C. § 102(e) over U.S. Pub. No. 2002/0073076 to Xu et al. (hereinafter “Xu”).

The second ground is whether claims 9-11 are patentable under 35 U.S.C. §103(a) over Xu in view of U.S. Pat. No. 7,110,968 to Haynes et al. (hereinafter “Haynes”).

VII. ARGUMENTS

A. JURISDICTIONAL STATEMENT

The Board has jurisdiction to consider this Appeal Brief under 35 U.S.C. 134(a). The Examiner mailed a Final Rejection on May 11, 2009, setting a three-month shortened statutory period for response. The time for responding to the final rejection under the shortened statutory period expired August 11, 2009. Rule 134. A one-month extension of time to respond to the final rejection with fee was filed pursuant to 37 C.F.R. 1.136(a) and on August 26, 2009, Appellant filed a response that was received by the Patent and Trademark Office including arguments against the Examiner’s 35 U.S.C. § 102(e) rejection

of claims 5-8 and the Examiner's 35 U.S.C. §103(a) rejection of claims 9-11. The amendments presented in the August 26, 2009 response were considered and entered by the Examiner. However, the Examiner believes that Xu teaches (specifically in paragraphs 0031, 0034, 0038, 0046, 0047 and 0051) creating, adding, deleting, updating and searching database files online and offline. On September 11, 2009, Appellant filed a Notice of Appeal and an Extension of Time with the proper fee paid pursuant to 37 C.F.R. 1.136(a). The time for filing an Appeal Brief expires on November 11, 2009. This Appeal Brief is timely and is being filed on November 11, 2009.

B. STATEMENT OF FACTS

The Examiner has rejected claims 5-8 under 35 U.S.C. § 102(e) as anticipated by Xu because "the client of the mobile device in Xu et al is able to perform user create, add, delete, update and search database files online and offline."¹ Further, the Examiner has rejected claims 9-11 as unpatentable under 35 U.S.C. §103(a) over Xu in view of U.S. Pat. No. 7,110,968 to Haynes et al. Appellant has amended claim 6 to include the limitations of claim 7 and 8. Accordingly, Applicant has cancelled claims 7 and 8.

¹ See Examiner's Final Office Action of May 11, 2009, page 8.

C.

35 U.S.C. § 102(e) REJECTIONS

The Federal Circuit has stated that “[t]o anticipate, **every element and limitation** of the claimed invention must be found in a single prior art reference², **arranged as in the claim.**”³ [Emphasis added]. The Federal Circuit has added that the anticipation determined is viewed from one of ordinary skill in the art: “There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention.”⁴ Furthermore, “a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”⁵

² *W.L. Gore and Associates v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1984).

³ *Brown v. 3M*, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001) citing *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F. 3d 1376, 1383, 58 USPQ2d 1286, 1291 (Fed. Cir. 2001); *Scripps Clinic & Research Found v. Genentech Inc.*, 927 F. 2d 1565, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991) (Emphasis added by Appellant); see also *General Am. Transp. Co. v. Cryo-Trans, Inc.*, 93 F.3d 766 (Fed. Cir. 1996) *cert. denied*, 117 S. Ct. 1334 (1997); *Wiener v. NEC Electronics, Inc.*, 102 F. 3d 534 (Fed. Cir. 1996); *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452 (Fed. Cir. 1984).

⁴ *Scripps Clinic & Research Found v. Genentech Inc.*, 927 F. 2d 1565, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991). [Emphasis added]

⁵ *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, USPQ2d 1051, 1053 (Fed. Cir. 1987). [Emphasis added]

1. Claim 5 is fully patentable over Xu

“If examination at the initial stage does not produce a prima facie case of unpatentability, then without more the applicant is entitled to a grant of the patent.”⁶ Claim 5 provides, in part, that a user may access data, post data, update data and delete data selected from the group consisting of data files and database files, **both online and offline** via a browser. Xu does not disclose or suggest both online and offline, as presently claimed.

The Examiner cites paragraphs [0031], [0034], [0038] and [0046-0047] as evidence that Xu teaches a user creating, adding, deleting, updating and searching database files, both online and offline. However, the Examiner appears to have misinterpreted Xu. Specifically, paragraph [0031] in Xu teaches only offline actions, as each action is done via an offline database manager program. Nowhere in paragraph [0031] does Xu teach completing such actions online, as the Applicant’s invention requires.

Further, paragraphs [0034] and [0038] of Xu do not teach creating, adding, deleting, updating and searching database files, both online and offline, as the Applicant’s invention requires. Instead Xu teaches only online searching within paragraphs [0034] and [0038]. Xu also mentions allowing a user to modify search parameters within in the online search. It may be argued that a

⁶*In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

user, by modifying the search parameters, may be adding, deleting, or updating the search results; however, modifying the search results is not analogous to modifying the database itself, as modified search results have no effect on the actual database.

Further, with respect to paragraph [0046] of Xu, the Examiner is reading more into the Xu patent than is actually present. Xu teaches utilizing an offline database manager program to create, add, delete and update database files. Thus, it is clear that utilizing an offline database manager program means that the user is offline while performing such creations, additions, deletions and updates. Additionally, there is only a brief mention of anything even remotely related to any online activity in Xu paragraph [0046], which is clearly limited to the user uploading a modified database file by utilizing FTP or similar network protocols (the database file having previously downloaded and then modified offline). However, uploading database files does not constitute the actions of creating, adding, deleting and updating database files *online*, as is required by the claims of the Applicants' invention.

Lastly, paragraph [0047] of Xu teaches the step of modifying database files by adding, deleting or updating records within the database files (See Fig. 4, step 402). However, such actions are only accomplished *offline* once the user

has created at least one database file offline (See Fig. 4, step 401). Xu makes it clear that the subsequent step after step 401 must occur offline as there is no intermediate step between step 401 and 402 which suggests a user is working within the online environment. Such is reinforced by step 403, which specifically outlines the description of online activity through teaching only the action of uploading database files. Such is not the case in the Applicant's claimed invention. To the contrary, the Applicant's invention accomplishes its actions of modifying database files both offline and online.

In light of the aforementioned arguments, clearly Xu does not disclose each and every element as arranged in the presently claimed invention. It is well established that “each element of the claim”⁷ must be “arranged as in the claim.”⁸ As such, claim 5 is fully patentable over Xu and the rejection should be reversed because Xu lacks each and every element of Applicant's invention.

2. Newly-amended claim 6 is fully patentable over Xu

“If examination at the initial stage does not produce a prima facie case of unpatentability, then without more the applicant is entitled to a grant of the

⁷ *W.L. Gore and Associates v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1984).

⁸ *Lindenmann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452 (Fed. Cir. 1984).

patent.”⁹ Claim 6 provides, in part, “performing an operation **via a browser both online and offline, wherein said operation**¹⁰ is selected from the group consisting of assessing information, posting information, updating information, deleting information and combinations thereof...”

The Examiner cites paragraphs [0031], [0034], [0038] and [0046-0047] as evidence that Xu teaches a user creating, adding, deleting, updating and searching database files, both online and offline. However, the Examiner appears to have misinterpreted Xu. Specifically, paragraph [0031] in Xu teaches only offline actions, as each action is done via an offline database manager program. Nowhere in paragraph [0031] does Xu teach completing such actions online, as does the Applicant’s invention.

Further, paragraphs [0034] and [0038] of Xu do not teach creating, adding, deleting, updating and searching database files, both online and offline, as required by the claims of the Applicant’s invention.

Further, with respect to paragraph [0046] of Xu, the Examiner is reading more into the Xu patent than is actually present. Xu teaches utilizing an offline database manager program to create, add, delete and update database files. Thus, it is clear that utilizing an offline database manager program means that

⁹ *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

¹⁰ Claim 6 is currently amended to include the limitations of claim 7 and claim 8, which are now cancelled.

the user is offline. Additionally, there is only a brief mention of anything even remotely related to any online activity in Xu paragraph [0046], which is limited to the user uploading a modified database file by utilizing FTP or similar network protocols (the database file having previously downloaded and then modified offline). However, uploading database files does not constitute the actions of creating, adding, deleting and updating database files *online*, as are present in the claims of Applicants' invention.

Lastly, paragraph [0047] of Xu teaches the step of modifying database files by adding, deleting or updating records within the database files (See Fig. 4, step 402). However, such actions are only accomplished *offline* once the user has created at least one database file *offline* (See Fig. 4, step 401). Xu makes it clear that any subsequent steps after step 401 (creation of the database) must occur offline. Such is reinforced by step 403, which specifically outlines the description of online activity through requiring the action of uploading database files. Such is not the case in the Applicant's claimed invention. To the contrary, the Applicant's invention accomplishes its actions of modifying database files both offline and online.

In light of the aforementioned arguments, clearly Xu does not disclose each and every element of Applicant's invention and thus Xu cannot have each

and every element arranged as in the presently claimed invention. Again, it is well established that “each element of the claim”¹¹ must be “arranged as in the claim.”¹² As such, claim 6 is fully patentable over Xu and the rejection should be reversed.

D. 35 U.S.C. §103(a) REJECTIONS

Under the U.S. Patent Act, an invention cannot be patented if the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.¹³ An obviousness rejection turns on whether “a skilled artisan would have been motivated to combine the teachings of the prior art references to achieve the claimed invention.”¹⁴ “Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims are at issue are to be ascertained; and the level of ordinary skill in the pertinent art are resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined.”¹⁵ Further, “[a] patent composed of several elements is not proved obvious merely by demonstrating that each of its

¹¹ *W.L. Gore and Associates v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1984).

¹² *Lindenmann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452 (Fed. Cir. 1984).

¹³ 35 U.S.C.S. 103(a).

¹⁴ *P & G v. Teva Pharms. USA, Inc.*, 566 F.3d 989 (Fed. Cir. 2009).

¹⁵ *Dennison Mfg. Co. v. Panduit Corp.*, 475 U.S. 809 (U.S. 1986)

elements was, independently, known in the prior art.”¹⁶ Rather, “rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”¹⁷ “[T]o reject claims in an application under section 103, an examiner must show an un rebutted prima facie case of obviousness.”¹⁸ “In the absence of proper prima facie case of obviousness, an applicant who complies with the other statutory requirements is entitled to a patent.”¹⁹

1. Claim 9 is fully patentable over Xu in view of Haynes

Claim 9 depends from claim 6, and therefore contains all the limitations of claim 6. Consequently, the arguments presented above in support of the patentability of claim 6 are incorporated hereunder in support of claim 9. Further, Haynes does not supply the missing element of online operations as required by Applicant’s claims. Accordingly, the combination of Xu and Haynes does not teach all elements of Applicant’s Claim 9 and Claim 9 should be allowed.

¹⁶ *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (U.S. 2007).

¹⁷ *Id.*

¹⁸ *In re Deuel*, 51 F.3d 1552, 1557, U.S.P.Q. 2D (BNA) 1210, 1214 (Fed. Cir. 1995).

¹⁹ *In re Rouffer*, 149 F.3d 1350, 1355 (Fed. Cir. 1998).

2. Claim 10 and claim 11 are fully patentable over Xu in view of Haynes

Claim 10 and claim 11 depend from claim 9, which depends in turn from claim 6. Accordingly, claim 10 and 11 contain all the limitations of claim 6. Consequently, the arguments presented above in support of the patentability of claim 6 are incorporated hereunder in support of patentability of claim 10 and claim 11. No additional references are cited by the Examiner that would supply the missing element of online operations as required by Applicant's claims. Accordingly, the combination of Xu and Haynes does not teach all elements of Applicant's Claims 10 and 11 and Claims 10 and 11 should be allowed.

E. CONCLUSION

The Examiner has clearly erred with respect to the patentability of the claimed invention. It is respectfully requested that the Board overturn the Examiner's rejection of all pending claims, and hold that the claims are not rendered anticipated or obvious by the cited references. The Board is respectfully requested to carefully consider the arguments set forth above in support of patentability of each of independent Claims 5 and 6 and in support of patentability of Claims 9-11.

{Signature follows on next page}

Respectfully submitted, this 11th day of November, 2009,

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VIII. CLAIMS APPENDIX

1. (Cancelled)
2. (Cancelled)
3. (Cancelled)
4. (Cancelled)
5. (Previously presented) A method for data transfer or transferring data, said method comprising the steps of:

obtaining a wireless mobile device, wherein said wireless mobile device comprises a browser selected from the group consisting of WAP browsers and any other wireless mobile device browser;

selecting an operation from the group consisting of accessing data selected from the group consisting of data files and database files via said browser both online and offline, posting data selected from the group consisting

of data files and database files via said browser both online and offline, updating data selected from the group consisting of data files and database files via said browser both online and offline, deleting data selected from the group consisting of data files and database files via said browser both online and offline, and combinations thereof;

utilizing said wireless mobile device to access a computer on a very secure environment with data integrity; and

performing said selected operation.

6. (Currently amended) A method for accessing, posting, updating and deleting information selected from the group consisting of any type of data files and database files, said method comprising the steps of:

obtaining a wireless mobile device, wherein said wireless mobile device comprises a browser selected from the group consisting of WAP browsers and any other wireless mobile device browser;

utilizing said wireless mobile device to access a computer on a very secure environment with data integrity; and

performing an operation via said browser both online and offline,
wherein said operation is selected from the group consisting of accessing information, posting information, updating information, deleting information, and combinations thereof, said information being selected from the group consisting of any type of data files and database files.

7. (Cancelled)

8. (Cancelled)

9. (Previously presented) The method of claim 6, further comprising the steps of:

utilizing a WAP Shopping Site having a catalog system, wherein said WAP Shopping Site allows displaying, browsing, and searching of products

with a WAP shopping cart, and wherein said WAP shopping cart allows visitors to add, view, and delete items ordered and allows visitors to check out;

upon checkout, presenting said visitors with a secure page to supply their personal information;

providing 24 Hour a Day, 7 Days a Week Support System for feedback and communications; and

utilizing a database for storage of said information.

10. (Previously presented) The method of claim 9, wherein said database is selected from the group consisting of an Access Database, a SQL Server, and an Oracle Server.

11. (Previously presented) The method of claim 9, further comprising the step of:

allowing computer access to said WAP Shopping Site via a computer.

IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None.